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December 22, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 05-85, NSTAR Electric/NSTAR Gas

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced matter is the Reply Comments of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

Robert N. Werlin

Enclosure

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

| | | |
|---|---|---|
| Boston Edison Company | ) | |
| Cambridge Electric Light Company | ) | D.T.E. 05-85 |
| Commonwealth Electric Company | ) | |
| NSTAR Gas Company | ) | |

**REPLY COMMENTS OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY**

Submitted by:

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Dated: December 22, 2005

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**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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| Boston Edison Company<br>Cambridge Electric Light Company<br>Commonwealth Electric Company<br>NSTAR Gas Company | ) | D.T.E. 05-85 |

# REPLY COMMENTS OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY

## I. INTRODUCTION

On December 6, 2005, Boston Edison Company ("Boston Edison"), Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth") (together, "NSTAR Electric"), NSTAR Gas Company ("NSTAR Gas", collectively with NSTAR Electric, the "Companies") and the Attorney General of Massachusetts (the "Attorney General"), the Low-Income Energy Affordability Network ("LEAN") and Associated Industries of Massachusetts ("A.I.M.") (collectively with the Companies and NSTAR, the "Settling Parties") with regard to the Companies' proposed base rate case that was to have been filed pursuant to G.L. c. 164, § 94 and ancillary matters.

As described below, the Settlement Agreement includes a comprehensive rate plan that will provide both immediate rate relief and long-term price stability for all of the Companies' customers. In addition, other elements of the Settlement Agreement will provide enhanced service quality, reliability and other customer benefits. The standard of review for the Department's consideration of settlements is "reasonableness." The record in this case establishes that the Settlement Agreement meets and exceeds that standard, since the Settling Parties have presented negotiated terms that will provide customer benefit far-in-excess of those that could be achieved through a traditional rate-case proceeding. The Settling Parties are composed of the Companies and representatives of all of their customers. The Attorney General, by statute, represents all customers; A.I.M. represents 7,600 employers in both the manufacturing and non-manufacturing sectors in the Commonwealth; and LEAN represents low-income customers. These customer representatives have ably represented customers in framing a Settlement Agreement that undeniably results in an outcome that is both reasonable and will result in lower rates and enhanced incentives for service improvements than would have resulted from full litigation of four rate cases.

The Companies will respond to the comments filed in this proceeding below, but none of those comments refutes the fact that the Settlement Agreement is reasonable, will result in just and reasonable rates and is in the public interest.

## II. STANDARD OF REVIEW

The Department evaluates proposed settlements using consistent criteria, whether contested or not. Housatonic Water Works Co., D.P.U. 90-284-A at 16 (1992). See also Massachusetts-American Water Co., D.P.U. 90-146 (1990) (contested settlement accepted by the Department as reasonable). The Department applies a standard of reasonableness in reviewing an offer of settlement. Western Massachusetts Electric Company, D.T.E. 01-99, at 7 (2002). In assessing the reasonableness of an offer of settlement, the Department must review the entire record to ensure that the settlement is consistent with Department precedent and the public interest. Bay State Gas Company, D.P.U./D.T.E. 97-97, at 6 (1997), citing, Boston Edison Company, D.P.U. 92-130-D at 5

(1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). See also Telecommunications Relay Service, D.P.U./D.T.E. 96-118, at 7 (1998).

> This reasonableness determination is required by the Department's statutory obligation under G.L. c. 164, §§ 93, 94 and 94A to reach decisions that are consistent with the public interest and that result in just and reasonable rates and charges.

Housatonic Water Works Co., D.P.U. 90-284-A at 14 (1992).

Settlement differs fundamentally from adjudication in that a settlement may be founded on a less-than-full record or may achieve results that would differ from those reached through adjudication. Massachusetts-American Water Company, D.P.U. 95-118, at 139 (1996), citing Housatonic Water Works Company, D.P.U. 90-284, at 3, *Interlocutory Order on Appeal* (August 27, 1991). See also Boston Edison Company, D.P.U./D.T.E. 97-95, at 25 (2001); citing, Massachusetts-American Water Company, D.P.U. 95-118, at 138-39 (1996) (settlement may achieve results that would differ from or even go beyond those reached or reachable through adjudication).

## III. SUMMARY OF SETTLEMENT AGREEMENT

The Settlement Agreement is summarized in the letter accompanying the Settlement Agreement as follows:

- **Rate Plan for NSTAR Electric (paragraphs 2.1 through 2.12)**

> The Settlement Agreement provides for an Alternative Rate Stabilization Plan that will provide for a reduction in the rates that NSTAR Electric customers pay for distribution and transition charges and stabilize the sum of those rates over a seven-year period. On January 1, 2006, the transition charges for NSTAR Electric will be reduced by approximately $20 million below the rates that are being proposed in the annual reconciliation filings (D.T.E. 05-88 and D.T.E. 05-89). Beginning on May 1, 2006, and annually on January 1st thereafter, distribution rates for NSTAR Electric would increase, but those increases would be offset by

reductions in the transition charges.

- **Rate Plan for NSTAR Gas (paragraphs 2.13 through 2.15)**

  The Settlement Agreement provides for NSTAR Gas to withdraw its request for a distribution rate increase and to defer recovery of approximately $18.5 million in gas costs that are presently being recovered in the cost-of–gas-adjustment clause ("CGAC"). The deferral will result in a decrease in the CGAC factor on January 1. 2006. NSTAR Gas intends to file a proposal for a price-cap plan, and the Settlement Agreement provides that the existing rates will be used as the cast-off rates for purposes of such a proposal.

- **Merger of NSTAR Electric (paragraphs 2.16 through 2.18)**

  The Settlement Agreement includes provisions relating to a request to be filed in 2006 for approval of the formal corporate merger of Cambridge, Commonwealth and Canal Electric Company into Boston Edison, which would create a single NSTAR Electric Company. This will be the final step in the merger of NSTAR. For the last five years, all of the electric companies have been acting operationally as a single entity, and the formal merger will simplify accounting and recordkeeping. There is no distribution rate change associated with the merger, except for the impact on transmission rates for Cambridge. Because Cambridge presently classifies its 13.8 kilovolt ("kV") facilities as "transmission," the transmission tariffs filed with the Federal Energy Regulatory Commission ("FERC") would need to change when Cambridge is merged into Boston Edison. In order to resolve this unusual treatment of 13.8 kV facilities, the Settlement Agreement permits those facilities to be reclassified as "distribution" and the revenue recovery transferred from transmission rates to distribution rates on January 1, 2007.

- **Expansion of Boston Edison Storm Fund (paragraphs 2.19 through 2.20)**

  The Settlement Agreement provides for the expansion of the existing Boston Edison Storm Fund, initially established in the Boston Edison Restructuring Settlement approved by the Department in D.P.U./D.T.E. 96-23. The storm fund will now be available for Cambridge and Commonwealth with the fund level increased from $8 million to $13.5 million, using proceeds from emissions credits that were sold in the past.

- **Procurement Initiatives (paragraphs 2.21 through 2.22)**

  The Settlement Agreement provides for new initiatives for procuring Basic and Default Service for customers of NSTAR Electric and

NSTAR Gas. For NSTAR Electric, staggered contract purchases having terms of one, two and three years will be used to procure Basic Service supplies for residential customers in order to reduce the price volatility facing those customers. NSTAR Gas will implement the gas procurement program approved by the Department in D.T.E. 04-63 and develop a fixed-price gas supply option for residential and small commercial Default Service customers.

- **Customer Service Quality, Safety and Reliability Programs (paragraphs 2.23 through 2.36)**

  The Settlement Agreement provides for a series of programs designed to supplement the existing service-quality plan already in place and approved by the Department. These new initiatives include enhanced incentives intended to align the interests of customers and the Companies. The programs include: (1) an arrearage forgiveness program; (2) projects designed to provide enhanced inspections of manholes and stray voltage; (3) accelerated removal of double poles; (4) informational "report cards" for customers on service-quality performance; (5) an audit of SAIDI/SAIFI reporting; (6) a service-quality metric for electric circuit performance; and (7) a service-quality metric for gas leaks per mile.

## IV. REPLY TO COMMENTS

In this proceeding, six sets of comments were filed on the Settlement Agreement.[1] As described in more detail below, one of the commenters (The Energy Consortium) "does not oppose Department approval of the Settlement [Agreement]," two commenters "support[] the immediate implementation of the major components of the Settlement [Agreement] (President and Fellows of Harvard College, Massachusetts Institute of Technology), one of the commenters (National Energy Marketers Association) objects to only two discrete procurement provisions in the Settlement Agreement and another

[1] The Companies note that additional entities filed petitions to intervene in this proceeding. Because the Settlement Agreement will either be approved or will expire on its own terms on December 30, 2005, the Companies will not file formal responses to those petitions. However, the Companies' silence should not construed as acquiescence that those entities have demonstrated that they are entitled to be granted intervenor status or agreement with any assertions made in those petitions.

objects to the provisions providing incentives to advocate on behalf of customers on issues relating to market structure (Constellation Energy Commodities Group, Inc). The Cape Light Compact stands alone as the only entity that states that the Settlement Agreement is "contrary to the public interest."[2]

Notably, no commenter has asserted or implied that the outcome of a fully litigated rate case would result in distribution rates lower than those achieved by the Settlement Agreement.

### A. The Energy Consortium

The Energy Consortium ("TEC") does not oppose Department approval of the Settlement Agreement, and acknowledges the fact that the Settlement Agreement will "ameliorate the current high prices of electricity...[and will] address low-income arrearages and the service quality issues..." (TEC Comments at 1). TEC does express several concerns about the settlement process, and in general, TEC's role in dealing with issues that have not been resolved by the Settlement Agreement. For example, even though TEC recognizes that the Settlement Agreement "provides benefits to consumers," it is concerned about the tight time frame needed to complete settlement negotiations and believes that opportunities to include other issues in the Settlement Agreement may have been lost. TEC also seeks an opportunity to participate in future discussions relating to potential rate-design changes, market inefficiencies, and expansion of long-term contract procurement for Basic Service provided to small C&I customers (TEC Comments at 2-3).

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[2] Conservation Law Foundation filed comments noting, correctly, that the Settlement Agreement is silent on the issue of long-term Basic Service contracts for renewable energy.

The Companies understand TEC's concerns, especially the tight time frames for settlement negotiations. In this case, the Companies were preparing four rate cases to be filed in October. Shortly before the filing date, the Companies and the Attorney General began serious negotiations to resolve the rate cases, avoid litigation and provide customer benefits beginning January 1, 2006. Although TEC and other stakeholders were contacted about the negotiations and asked to join in what became the Settlement Agreement, the Settling Parties simply ran out of time if the customer savings were to be implemented on January 1, 2006.

However, the substantive issues for which TEC has indicated concern are generally either not addressed in the Settlement Agreement or not finally resolved. In most such cases, the normal opportunity for regulatory review and customer participation will occur, and TEC will have an opportunity to participate and provide input. For example, issues relating to rate design will require future regulatory filings with the Department, and nothing in the Settlement Agreement prejudices TEC's rights or requires any particular outcome.

The Companies regret that TEC was not able to be a signatory to the Settlement Agreement, but believes that TEC's members will receive significant savings and other benefits as a result of it. Because the substantive issues that TEC raises were either not addressed by the Settlement Agreement or were resolved in a manner that benefits TEC's members, the terms of the Settlement Agreement are reasonable for TEC's members.

### B. The President and Fellows of Harvard College/Massachusetts Institute of Technology

The President and Fellows of Harvard College ("Harvard") and the Massachusetts Institute of Technology ("MIT") also do not oppose Department approval of the

Settlement. Harvard and MIT emphasize that there should be adequate regulatory review and rights for public participation in future proceedings contemplated under the Settlement Agreement, e.g., rate-design changes (¶¶ 2.11, 2.12 of the Settlement Agreement); NSTAR Electric merger-related issues (¶¶ 2.16, 2.17); annual rate filings (¶ 2.6 of the Settlement Agreement) (Harvard Comments at 3-9; MIT Comments at 3-9).

No substantive or procedural rights on such issues are prejudiced by approval of the Settlement Agreement and the Companies will endeavor to work with their customers on these issues. As is the case with TEC, Harvard and MIT benefit from the terms of the Settlement Agreement and their concerns about future issues or proceedings will be decided in due course in accordance with established regulatory procedures. Accordingly, Harvard's and MIT's comments provide no basis for the Department to reject the Settlement Agreement.

### C. National Energy Marketers Association

The National Energy Marketers Association ("NEM") objects to two paragraphs of the Settlement Agreement and "urges the Department not to adopt" or "reject" them (NEM Comments at 2-3). NEM's position on these issues is without merit. Those provisions call for: (1) the procurement of Basic Service by NSTAR Electric under longer-term contracts (Settlement Agreement at ¶ 2.21); and (2) the development of a fixed-price gas service for residential and small commercial taking Default Service (Settlement Agreement at ¶ 2.22).

As an initial matter, the Companies note that the provisions of the Settlement Agreement, by its own terms "...are not severable. This Settlement Agreement is conditioned on its approval in full by the Department" (Settlement Agreement at ¶ 3.4). Accordingly, it is not possible for the Department to reject individual terms of the

Settlement Agreement. The Settlement Agreement was negotiated in good faith by the Settling Parties and includes many compromises and trade-offs that require the non-severability clause. More importantly, however, the provisions that NEM finds objectionable are reasonable and provide customer benefits.

The customer benefits of paragraph 2.21 of the Settlement Agreement were directly addressed in the response to Information Request DTE-3-18:

> As the Department has recognized, for residential customers with limited competitive alternatives, the laddering of procurements for Basic Service decreases price volatility because it blends the market prices offered over several supply solicitations. In fact, this is precisely why the Department established a similar procurement strategy for residential and small C&I customers in D.T.E. 02-40-B at 44-45 (2003). The expansion of this strategy as described in paragraph 2.21 of the Settlement Agreement is designed to enhance that customer benefit of providing greater price stability.

A fixed-price option for residential and small commercial gas customers provides similar benefits. NEM's complaint that the fixed-price option "should be offered by the competitive marketplace" (NEM Comments at 3) are telling because it is precisely the competitive market's failure to succeed in offering such an option for residential and small commercial customers that necessitated such a provision. NEM's complaint that NSTAR Gas not provide this service as a "regulated utility" is without merit. NSTAR Gas makes no money in providing Default Service and the fixed price option is nothing more than a rate design option that will be offered to eligible Default Service customers.

Accordingly, NEM's comments and proposals should and must be rejected by the Department.

**D. Constellation Energy Commodities Group, Inc.**

Constellation Energy Commodities Group, Inc. ("Constellation") urges the Department to reject the provisions of the Settlement Agreement that provide for possible incentive mechanisms if NSTAR Electric is successful in efforts to advocate on behalf of customers on issues relating to market structure and efficiencies. See Settlement Agreement at ¶¶ 2.32 through 2.36. Constellation asserts that such issues shouldn't be included in the Settlement Agreement because they are "beyond the Department's jurisdiction", might lead to NSTAR Electric taking "extreme or excessive" actions and are unnecessary because NSTAR Electric is already pursuing such initiatives (Constellation Comments at 2).

Constellation's arguments must be rejected by the Department. As is the case with NEM's comments, it is not possible for the Department to reject or accept individual terms of the Settlement Agreement (Settlement Agreement at ¶ 3.4). Also, as with the case of NEM's comments, the substance of Constellation's objections is without erroneous.

The provisions of paragraphs 2.32 through 2.36 of the Settlement Agreement do not supersede the Department's jurisdiction because they do not ask the Department's to decide matters under the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). Those provisions deal with only the possible retail rate recovery and the sharing of savings resulting from actions taken by NSTAR Electric. Those provisions do not ask the Department to endorse particular positions taken by NSTAR Electric or bind the Department with regard to positions that the Department may take before the FERC or other forums. NSTAR Electric intends only to take reasonable positions in advocating on behalf of its customers and Constellation is free to take contrary positions if it so desires. Providing reasonable cost-recovery and incentive mechanisms for successful advocacy that benefits customers is in the public interest and is an appropriate response to an electricity market that is saddling customers with unnecessary costs and is in need of significant structural improvements.

Constellation's arguments do not justify rejection of the Settlement Agreement and the demonstrated customer benefits.

**E. Cape Light Compact**

The Cape Light Compact ("CLC") states in its comments of December 15, 2005 that it has concerns about whether the Settlement Agreement meets the Department's standards (CLC Initial Comments, at 2).[3] As described below, CLC's comments are without merit and ill-serve customers that it purports to represent.

CLC's stated desire to delay approval (and effectively kill the Settlement Agreement) by requiring unnecessary litigation is incompatible with the terms and intent of the Settlement Agreement and, if accepted, would inevitably result in the adjudication of four rate cases and higher rates for the customers of NSTAR Electric and NSTAR Gas. The Settlement Agreement is designed to avoid the expense and burden of litigating four rate cases and performance-based regulation ("PBR") proceedings, and the Companies (after negotiation with the other Settling Parties) have made concessions that ensure that the terms of the Settlement Agreement are significantly more advantageous to customers

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3 In its Petition to Intervene, CLC essentially reiterates all of the comments filed on December 15, 2005. However, the Petition to Intervene includes two issues that were not mentioned in the comments. Both comments misconstrue the Settlement Agreement. First, CLC complains that the Department "should have confirmed the continuation of the exemption from stand-by distribution charges of customers with on-site renewable generation" (CLC Petition to Intervene at 8). Nothing in the Settlement Agreement addresses the issue and the existing tariff language (including exemptions) is undisturbed by the Settlement Agreement. CLC's complaint that the Settlement Agreement "would summarily approve a merger of the NSTAR Electric companies" is factually wrong. A merger could occur only after other appropriate Department approvals are obtained pursuant to G.L. c. 164, §§ 14, 21, 96, in separate proceedings, and formal petitions are approved by the FERC (Settlement Agreement at ¶ 2.16).

than the outcome of litigated cases. However, in order to avoid the rate cases and to ensure that the customer rate reductions begin on January 1, 2006, the Settlement Agreement terminates on December 30, 2005. If not approved in its entirety on that date, it is deemed withdrawn (Settlement Agreement at ¶ 3.5), and the Companies will have no choice but to seek the $89 million rate increases.

In contrast to a traditional rate case, followed by a PBR plan, the Settlement Agreement scales back the rate-case level of distribution rates to barely one-third of the increase that the Companies would have pursued.[4] See Exhibit NSTAR-1 (Settlement), the Companies' testimony and exhibits supporting the $89 million revenue deficiencies that would have been included in the rate case filing. In addition, the terms of the Simplified Incentive Plan ("SIP") provide for inflation-based increases that will be lower than the adjustments granted other companies in Department-approved PBR cases. Compare, e.g., inflation offset in paragraph 2.6 of the Settlement Agreement with the offset ordered in KeySpan Energy Delivery New England, D.T.E. 03-40, at 488 (2003). Coupled with other significant customer benefits resulting from offsetting reductions in the transition charges and CGAC, an expanded Arrearage Forgiveness Program for low-income customers, enhanced safety and reliability programs, the Settlement Agreement provides substantial customer benefits that would not be possible if traditional regulatory processes were followed. Each of the issues raised by CLC is addressed below.

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[4] Bay State Gas Company recently received approximately one-half of its requested increase. Bay State Gas Company, D.T.E. 05-27, at 432 (2005).

1. The Settlement Agreement Is Not a "Private Deal" or Contrary to the Public Interest.

The implication that the Settlement Agreement is an unseemly "private deal negotiated without the benefit of broader participation..." is both inaccurate and insulting. The Attorney General is a constitutional public official, mandated by statute to represent the interests of all customers. See G.L. c. 12, § 11E, which states:

> The [A]ttorney [G]eneral is hereby authorized to intervene in administrative or judicial proceedings held in the commonwealth *on behalf of any group of consumers* in connection with any matter . . . subject to the jurisdiction of the department of telecommunications and energy.

Id. The Attorney General could not, would not and did not engage in any type of back-room "private deal" that would jeopardize the interests of customers. The motives of the other signatories are equally beyond reproach. LEAN is an advocacy group representing the interests of low-income individuals and families in energy-related matters and it has responsibly represented their interests in negotiating this Settlement Agreement. A.I.M. publicly represents the interests of 7,600 employers in the Commonwealth. Thus, far from a limited "private deal," the Companies have engaged with the principal representatives of every major customer group in their service territories.

Citing the rejected dissent of a former Department Commissioner, CLC argues that the Department should conduct a fully litigated rate case simply because it has been some time since one was last performed.[5] This argument makes no sense. First, the

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[5] Commissioner Manning's statement that the Companies' last litigated rate case occurred in 1986 is factually wrong, as is CLC's reliance on that citation. Moreover, the Companies should not be criticized for settling cases and avoiding unnecessary litigation costs that are ultimately borne by customers. Such a "litigate at all costs" strategy is contrary to public policy and inconsistent with long-standing Department precedent in support of arms' length negotiated compromises.

Companies have submitted a fully document revenue-requirement calculation that supports an increase of $89 million, and the Settlement Agreement reduces that amount to $30 million, which will be offset by nearly $70 million in rate relief.[6] The Companies do not understand how conducting four fully litigated rate cases, which will result in higher rates and lose the other benefits of the Settlement Agreement, could possibly be in the public interest. The Companies also don't understand why CLC, purportedly on behalf of customers in its municipalities, would advocate that the Department reject the Settlement Agreement and eschew demonstrated customer benefits. Rejection of the Settlement Agreement, as advocated by CLC, would be contrary to the public interest.

2. The Rate Relief Is Not a Rate Increase, Long-Term Price Stability Is Real and the SIP Is Consistent with Department Precedent.

CLC argues that the rate reduction for NSTAR Electric is really a rate increase and that the long-term price stability is illusory (CLC Initial Comments at 3). CLC is wrong on both counts. There is no doubt that NSTAR Electric will collect $30 million more in distribution revenues on May 1, 2006; however, it is equally true that rates to NSTAR Electric customers will be decreased through the $50 million reduction in revenues for transition charges. As the Department has found in similar circumstances, this type of mechanism results in "rate reductions." Cambridge/Commonwealth et al., D.P.U./D.T.E. 97-111, at 27 (1998). CLC is also incorrect that deferrals will accumulate and be collected through rate increases in 2012. As shown in Exhibit NSTAR-

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6 Under the terms of the Settlement Agreement, transition charges and CGAC rates are reduced by more than $38 million on January 1, 2006 (Settlement Agreement at ¶¶ 2.2, 2.14), and an additional reduction in the transition charges for NSTAR Electric will offset the $30 million distribution rate increase on May 1, 2006 (id. at ¶ 2.4)

2 (Settlement) at 4, the Companies have projected that there will be no deferral remaining at the end of the term of the rate plan (Settlement Agreement at ¶ 2.6). Thus, customer rates will be stable because the additional distribution revenues will be offset in full by reduced transition charges with no projected deferrals at the end of the term of the rate plan.

CLC also claims that the annual distribution rate increases "drastically reduces regulatory oversight" by permitting increases without a full rate case (CLC Initial Comments at 3). This argument is without merit because it ignores both statutory provisions relating to PBR forms of regulation (G.L. c. 164, § 1E) and Department precedent endorsing and mandating the type of price regulation embodied by the SIP in the Settlement Agreement (Settlement Agreement at ¶ 2.6). See also Boston Gas Company, D.T.E. 03-40, at 436-508 (2003); Incentive Ratemaking, D.P.U. 94-158 (1995).

3. The Deferral of the Collection of Transition Charges With Appropriate Carrying Charges Does Not Conflict with the Restructuring Act.

CLC claims that reducing the transition charge in order to maintain price stability for customers is a violation of Restructuring Act (Chapter 164 of the Acts of 1997) because "[e]xtending the recovery of transition costs far into the future, and at in [*sic*] inflated interest rate, is contrary to the intent of the Restructuring Act, a poor deal for ratepayers and serves to further delay the implementation of a truly deregulated, competitive electricity market" (CLC Initial Comments at 4). In addition, CLC claims that the 10.88 percent carrying charge rate included in the Settlement Agreement "is much higher than NSTAR Electric's current cost of capital" (id.). Again, CLC is factually and legally wrong.

The Restructuring Act does not prohibit deferrals of the recovery of transition costs. The Department has explicitly considered the issue and has so ruled. D.P.U. /D.T.E. 97-111, at 37 ("Deferrals are well-established regulatory ratemaking practice, which the Act does not forbid."). Moreover, the time limit cited by CLC on the application of carrying charges, applies to the amortization of fixed generation assets. (CLC Initial Comments at 4, citing G.L. c. 164, § 1G(b)(3)(d)). Since those fixed assets have already been fully amortized, the restrictions referenced by CLC are inapplicable. See Response to Information Request DTE-3-17, Attachment DTE-3-17(d), at 3.

CLC's complaint about the 10.88 percent carrying charge misunderstands the derivation of that amount. It is not intended to be a "risk-free" rate of return, but the weighted-average, tax-effected cost of capital. The Department recently affirmed that the risk-free cost of capital is an inappropriate carrying charge for deferrals. D.T.E. 03-47-A at 42. The 10.88 percent carrying charge was based on an implicit return on equity of 7.99 percent (see D.T.E. 03-47-A at 33, 43), which is much lower than the rate-case return on equity of 11.5 percent (Exhibit NSTAR Electric-PRM-1) or even the return on equity of 10 percent approved a few weeks ago for Bay State Gas Company in D.T.E. 05-27.

Accordingly, the agreed-to carrying charges included in the Settlement Agreement (Settlement Agreement ¶ 2.9) are reasonable.[7]

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[7] CLC also claims in passing that the transition charge "serves to further delay the implementation of a truly deregulated, competitive electricity market" (CLC Initial Comments at 4). This claim is factually wrong because the charge applies to all customers and therefore has absolutely no impact on competitive generation alternatives.

4. The NSTAR Arrearage Forgiveness Program (the "NSTAR AFP") Is an Innovative and Appropriate Initiative.

As stated in the Settlement Agreement, "the NSTAR AFP comprehensive program developed in concert with LEAN Community Action Agencies for the neediest customers on low-income rates that will combine arrearage forgiveness with energy efficiency services, budget counseling and negotiated payment plans" (Settlement Agreement at ¶ 2.24). CLC objects to the fact that the costs incurred by the Companies to implement the NSTAR AFP are treated like other costs incurred by the Companies to provide distribution service (CLC Initial Comments at 4). Without citation to any related legal authority, CLC apparently believes that the NSTAR AFP is a charitable endeavor that should be funded by shareholders. The NSTAR AFP is a serious utility program that will provide a service in concert with the Companies' obligation to serve. The costs to provide the NSTAR AFP are no different from costs to subsidize low-income rates, the costs of energy efficiency programs or other worthwhile programs mandated by law or Department policy. CLC's position is without merit.

5. CLC's Criticisms of the Companies' Safety and Reliability Programs Are Unfounded.

CLC argues that NSTAR Electric customers should not have to pay twice for the safety and reliability programs listed in paragraph 2.26 of the Settlement Agreement (CLC Initial Comments at 5).[8] The provisions of the Settlement Agreement directly address the issue because only the "incremental" costs associated with the safety and reliability programs are eligible for recovery. Moreover, paragraph 3.8 of the Settlement

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[8] The Companies will not dignify with a serious response CLC's baseless invective about revenues being "diverted" to shareholders.

Agreement also specifically prohibits any form of double recovery. CLC's complaints are totally unfounded.

6. <u>CLC's Comments on Electricity Procurement Are Irrelevant.</u>

CLC presents a "straw man" argument that the Basic Service procurement initiative "is unlikely to yield lower prices" (CLC Initial Comments at 5). CLC again misses the point. As described in paragraph 2.21 of the Settlement Agreement, the intent of the laddered procurement strategy with longer-term contracts is not necessarily to reduce costs, but rather, "to reduce rate volatility." Having said that, the Companies would note that staggered procurements have resulted in lower Basic Service prices for January 1, 2006 than generation supplies purchased by CLC under a single procurement. <u>See</u> Appendix A, hereto, a copy of a December 1, 2005 article in the <u>Cape Cod Times</u>.

## V. CONCLUSION

The Settlement Agreement between the Companies and a vast cross-section of their customers meets and exceeds the Department's standard of review of reasonableness in that approval will result in just and reasonable rates, significant customer benefits and is consistent with Department policies and precedent. The Department should approve the Settlement Agreement so that customer benefits can begin on January 1, 2006.

Respectfully submitted,

**BOSTON EDISON COMPANY**
**CAMBRIDGE ELECTRIC LIGHT COMPANY**
**COMMONWEALTH ELECTRIC COMPANY**
**NSTAR GAS COMPANY**

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Date: December 22, 2005

## Appendix A

**Cape Cod Times 12/1/05 By DAVID SCHOETZ**

STAFF WRITER
BARNSTABLE - The cost of the electricity supply for Cape Cod and Martha's Vineyard homeowners will increase by 81 percent starting with December meter readings.

The cost of the actual electricity on residential bills will climb from 7.132 cents per kilowatt hour to 12.92 cents. Based on the average monthly use of 500 kilowatt hours, that means the supply side of a bill will go from $36 to $65, an increase of $350 a year.

After announcing the new rates yesterday, leaders of the Cape Light Compact, which negotiates power supply for Cape and Vineyard electric customers, blamed the dramatic increase on the volatile post-Hurricane Katrina energy market and record-high natural gas prices.

The rate hikes are part of a contract the compact signed last week with ConEdison Solutions that will run through January 2007. The delivery and transmission portion of a bill - about $45 based on the same average usage - will not change.

The White Plains, N.Y.-based company is the compact's current power supplier and, according to administrator Maggie Downey, offered the most competitive pricing of the three companies with whom they negotiated.

The compact unites more than 183,000 electric customers on Cape Cod and Martha's Vineyard to secure the best rate in a deregulated electric market. It also runs energy efficiency programs that its leaders say has saved money by reducing energy consumption in the region.

The compact's new residential supply rate is higher than those announced earlier this fall by National Grid and NStar Electric, which provide power to a combined 2.3 million other Bay State homes.

Between November and April, National Grid customers, including Nantucket residents, will pay 10.72 cents per kilowatt hour, a 49 percent increase over the previous rate. NStar customers, from January to June, will pay 11.2 cents, a 55 percent increase.

Those two companies, however, must file rate change requests with state regulators every six months. Depending on market conditions, their rates might continue to climb or could take a downswing.

The compact's new pricing is locked in for 14 months and under the terms of the ConEdison contract, cannot exceed the negotiated rates.

Consumers have choices
If the market softens, leaving compact customers paying substantially more than other Bay State residents, compact leaders might seek to "blend and extend," combining the 12.92 cent rate with a newly negotiated lower price but extending the ConEdison deal even longer.

"There are temporary periods where prices go higher, but we believe over the long run, the prices will come down again," Jorge Lopez, a ConEdison vice president, said during the announcement.

Residential and commercial customers can opt out of the compact and pay NStar's basic service rate, which for the last nine months has been slightly more expensive than the compact price. Now, NStar's rate would save the average residential user about $8.50 a month and would also be less expensive for some small-business customers. There is no fee to opt out of the compact but there is also no guarantee that the compact would have to take customers back.

Compact touts savings

Robert Mahoney, chairman of the Cape Light Compact's governing board, emphasized the compact's range of services - such as free home energy audits and the "green program," which gets up to 100 percent of its power supply from renewable sources. NStar's energy efficiency programs do not apply to customers on the Cape and Vineyard.

"It's not just the power supply," he said. "Where the real bucks are saved is with energy efficiency."

Downey said that since the compact signed its first power supply contract in May 2002, Cape and Vineyard customers have saved more than $5 million on rates compared with NStar customers. But, she added, this will not be the first time the compact's rates will be higher than NStar's.

Business power supply rates will also be affected, increasing 86 percent. The price paid by the compact's 43,000 "commercial" customers will increase from 7.169 to 13.37 cents per kilowatt hour, compared with NStar's 11.01 cent rate.

The compact's 150 industrial customers, who Downey said use the bulk of the region's supply, will now pay 14.38 cents per kilowatt hour, roughly double the current 7.169 rate. NStar industrial customers, however, face an even more daunting 16.251 cent rate until the end of March, a 90 percent increase.

With news of the increases, the race may be on to sign up for the Cape Light Compact Green program.

The first 3 percent of residents from each Cape and Vineyard town to enroll in the compact's clean energy supply program before the end of the year will enjoy an 8.9 cent rate freeze from Jan. 1 to March 31 - typically, the year's most expensive stretch.

Not only will the move result in worthwhile savings, but bargain hunters can deduct part of the renewable energy cost from their federal tax return and will help a local school earn a $25,000 solar panel.

Only Truro and Wellfleet have hit the 3 percent cap so far.

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